*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION No.22335 of 1996

% Date: .01.2006

 # Smt. M.D.Soujanya and another …. Petitioners

Vs

$ 1. S.V.V.P.V.M.C.Mahila Vidya Peeth,

Visakhapatnam and two others ….. Respondents

! Counsel for the petitioners : Sri D.V. Seetharam Murthy

^ Counsel for the respondent No.1 : Sri P.V.Sanjay Kumar

Counsel for respondents 2 and 3 : G.P. for Education

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> Head Note

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(2004)8 SCC 229

2(2005)1 SCC 31

[3] AIR 1988 SC 145

[4] (1993) 1 SCC 629

[5] AIR 1959 SC 689

[6] AIR 1965 SC 1196

[7] Judgment in W.P.No.8697/05 dt.7.11.2005

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22335 of 1996

In this writ petition, the petitioners question the action of respondents 2 and 3 in not admitting the posts, held by them, to grant-in-aid in terms of the provisions of the A.P. Private Educational Institutions Grant-in-aid (Regulations) Act, 1988 and seek consequential directions to the respondents to admit the said posts to grant-in-aid and for a further direction to the 1st respondent to pay their salary, as per the scales applicable to aided lecturers, with effect from 21.7.1993, the date of their regular appointment, till such time the posts are admitted to grant-in-aid.

Facts, to the extent necessary for this writ petition, are that the 1st petitioner, an M.Sc. in Zoology from Andhra University, and the 2nd petitioner, an M.Sc. in Physics and an M.Phil, possessed the qualifications and were eligible to be appointed as lecturers in degree colleges. The 1st respondent, an aided private college, established by Sri Venkateswara Vidya Peeth, was granted conditional permission to start a degree college by the 3rd respondent in G.O.Ms.No.550 dated 22.7.1980. Among the several conditions, prescribed was that appointment of staff was to be made as per the staff pattern prescribed by the government and that salaries and allowances must be paid as prescribed by the government.

Subsequently, the Director of Higher Education is said to have permitted the 1st respondent to open an additional section in B.Sc. degree course. Consequent

thereto, the 1st respondent appointed the petitioners as lecturers in zoology and physics. According to the petitioners, pursuant to G.O.Ms.No.12 dated 10.1.1992, the 1st respondent decided to fill up the posts held by the petitioners on temporary basis. Following the procedure prescribed, in G.O.Ms.No. 12 dated 10.01.1992, the posts were notified, a selection committee was duly constituted and the petitioners were selected by a six member selection committee. The list of selected candidates was approved by the governing body on 13.9.1993, and the petitioners were appointed as lecturers, in zoology and physics respectively, vide proceedings dated 13.7.1994, with effect from 21.7.1993. The Andhra university, vide letter dated 1.7.1994, is said to have informed the 1st respondent that the board of management of Andhra University, in its meeting held on 11.3.2004, had approved the appointment of the petitioners.

Petitioners would contend that despite their regular appointment, the 1st respondent was paying them a consolidated salary of Rs.1000/- per month and not the government scales of pay applicable to the posts held by them. They contend that the posts held by them are also eligible to be admitted to aid as per the provisions of the A.P. Private Educational Institutions Grant-in-Aid (Regulations) Act, 1988, and that the 1st respondent is bound to pay them regular scales as per the conditions subject to which it was permitted to be established under G.O.Ms.No.550 dated 22.7.1980. It is contended that the 1st respondent is charging high fees from students undergoing undergraduate courses and, despite there being no dearth of finances, it was contravening the orders/rules and continuing to pay a paltry sum of Rs.1000/- per month to the unaided staff, though they were appointed on a regular basis. Petitioners are said to have gone on a hunger strike for 40 days, and the Secretary of the 1st respondent is said to have made them sign an agreement on 14.9.1996 under which the unaided staff agreed for payment of consolidated salary of Rs.1800/- per month from 1.9.1996 with an understanding that the emoluments would be increased from 1.7.1997. Petitioners would contend that such an agreement is opposed to public policy, is unenforceable and that they were lulled into signing the agreement under compelling circumstances and on threat of termination. It is their case that the 1st respondent is bound to pay them the salary payable to aided lecturers and that the respondents are under an obligation to admit the posts to grant-in-aid.

In the counter affidavit, filed by the first respondent, it is stated that Sri Venkateswara Vidyapeeth, and its sister societies, had established various colleges with a view to improve the standards of education and to provide employment opportunities to unemployed post graduates. The V.M.C. Mahila Vidyapeeth is said to have been admitted to grant-in-aid in the year 1990 with the benefit of grant-in-aid being conferred only to 12 lecturers, while other lecturers were left out, inasmuch as only some of the posts in the department of arts were admitted to grant-in-aid. It is stated that permission was accorded to the 1st respondent to run the science department with temporary staff till these departments were also admitted to grant in aid, that in the year 1993 the temporary staff of the science department, including the petitioners, had represented to the management that if selections were not made, pursuant to G.O.Ms.No.12 dated 10.1.1992 and the posts were not admitted to grant-in-aid, they would have no chance of securing appointment and that they had requested the management to select them on a regular basis. It is stated that these employees had also assured that they would pressurize the government to admit their posts to grant-in-aid after their appointment and that they would not ask for increase in salary as they were aware of the financial position of the management. It is contended that on the basis of these entreaties and on humanitarian grounds the management had arranged for selection and the petitioners were selected along with three others. It is contended that the tuition fee structure prescribed in 1964 continued for nearly 35 years till it was revised in 1997 while the pay scales of lecturers were being revised periodically, and that, despite non-implementation of government pay scales, no action was taken against private unaided colleges inasmuch the government was well aware that it would lead to a situation where most of the colleges would have to be closed down resulting in vast unemployment of lecturers apart from causing inconvenience and disruption of studies to students. It is stated that the budget of the 1st respondent, for the year 1996-97, reveals a huge deficit and that even existing salaries are subsidized by the management. Reference is made to the strike resorted to by the petitioners and it is stated that they were placed under suspension and issued show cause notices as to why their services should not be terminated. However, subsequently, on humanitarian grounds, the management had agreed to negotiate with the petitioners and on the basis of the said negotiations, a written agreement was entered into on 14.9.1996 wherein the petitioners had agreed to accept the consolidated salary of Rs.1800/- per month with an annual increase of Rs.50/- per month from 1.7.1997. It is contended that the

petitioners had voluntarily signed the agreement, that it was for this reason that the disciplinary action initiated against them was dropped, and that the 1st respondent has been honouring its agreement. Reference is also made to the fact that the 1st respondent had applied to the government for admitting B.Sc. in C.B.Z. and B.Sc (computer science) courses to grant in aid in the year 1992, that the government has not taken any positive action thereon, nor was grant in aid provided for these approved courses, till date. It is contended that, in the absence of any grant being provided, the 1st respondent college was not in a position to pay lecturers the government scales of pay and insistence on payment of such salary would require the management to close down the departments concerned. It is the case of the 1st respondent that, despite the fact that in a women's colleges a department is eligible for admission to grant in aid, after 3 years of its commencement, and despite the fact that B.Sc. in CBZ course has been run by the 1st respondent from 1986-87 and B.Sc. (computers) from 1990-91, these posts have not yet been admitted to grant in aid. It is stated that till grant in aid is received, the management is not in a position to take upon itself the onerous liability of paying government scales to lecturers working in unaided departments which would also be self-defeating inasmuch as it would lead to closure of the institution itself.

A counter affidavit is filed, on behalf of respondents 2 and 3, wherein it is stated that the 1st respondent had appointed the petitioners, to teach in un-aided science sections in the college, on a temporary basis, that the grant in aid committee had visited the 1st respondent college and had submitted a report, wherein it was highlighted that the management of the college had not followed the rule of reservation while making appointments, that there were certain un-economic combinations in B.Com., B.Sc., B.A. courses and there were no english medium sections in the college and that the grant in aid committee had recommended that the college be admitted to grant in aid with effect from 12.3.1986, i.e., the date on which the corpus fund was deposited, subject to the conditions that (1) irregular appointments, made in violation of the communal roster, should be terminated and (2) un-economic sections be deleted from grant in aid.

It is stated that the government, vide G.O.Ms.No.170 dated 12.7.1990, had

admitted only one arts sections of the 1st respondent college to grant in aid and that the science sections were not admitted to grant in aid as there was no workload and they had become un-economic. It is stated that, as on date, the petitioners were not working, they had left the college and that the services of the 2nd respondent were terminated on 23.7.2005. It is stated that though the petitioners were appointed through a properly constituted selection committee, in terms of G.O.Ms.No.12 dated 10.1.1992, the question of admitting them to grant in aid did not arise as there was no aided science section in the college. It is stated that, in G.O.Ms.No.550 dated 22.7.1980, permission was granted for starting of the college subject to the conditions that the college should not seek grant either now or in future, despite that the college had requested for grant in aid and, as there was work load, the arts course was admitted to grant in aid. It is stated that the management has not questioned the non-admission to grant in aid as the establishment of the college was on such condition, and that individuals cannot seek admission of posts, in which they were working, to grant in aid and that the petitioners did not have the locus standi to file the writ petition as the grant in aid code dealt only with applications of the management.

Both Sri D.V.Seetharama Murthy, learned counsel for the petitioners, and Sri P.V.Sanjay Kumar, learned counsel for the 1st respondent, would agree that while one of the petitioners is no longer working with the 1st respondent college, the other continues to remain in service. As such the matter is being examined on merits.

Before examining the rival contentions, it is necessary to take note of the relevant statutory provisions. The A.P. Private Educational Institutions Grant in Aid (Regulations) Act, (Act 22/88), came into force with effect from 22.7.1985. Section 3 thereof deals with regulation of grant-in-aid to private educational institutions and thereunder no private educational institution shall be entitled to receive any grant in aid unless the committee constituted for the purpose recommends that it may be admitted to grant in aid. Under sub-section (2) of Section 3, the college is entitled to such grant in aid only from the date it satisfies all the conditions for admission to grant in aid as specified in the Andhra Pradesh Education Act, 1982, the rules made thereunder, the grant-in-aid Code and orders, and other instructions, issued by the government from time to time. Section 4 relates to release of grant in aid in respect of certain additional sections and such entitlement is only if the committee recommends release of grant in aid in respect of such additional sections and posts.

Sections 6 gives overriding effect to the provisions of the Act notwithstanding anything contained to the contrary in any other law for the time being in force.

While Act 22/88 provides that no grant in aid shall be provided without the recommendations of the committee, it is clear from the documents filed, along with the counter affidavit, by respondents 2 and 3, that the committee had recommended for admission, of only one of the Arts section, to grant in aid from 12.3.1986 subject to the conditions that the irregular appointments made, in violation of the communal roster, should be terminated and that the uneconomic sections are deleted from grant in aid. It is thus clear that in so far as grant in aid to the science sections are concerned, neither has the committee examined the proposals submitted by the 1st respondent nor has any recommendation been made for such grant. In G.O.Ms.No.170, Education (CE II.2) Department dated 12.7.1990, the government had directed that institutions which had made appointments, to teaching and non-teaching posts, in contravention of the rule of reservation, may be admitted to grant in aid with effect from the date of order in G.O.Ms.No.170 dated 12.7.1990, provided that they had fulfilled all other conditions to make them eligible for grant in aid. Annexure to the said G.O., contains a list of names of institutions and the courses and sections admitted to grant in aid and item 14 thereof reads as under:

"V.M.C. Mahila Vidyapeetha B.A. 1 Section: Pub. Eco & Pol. Eco. .

Visakhapatnam Pub. & Pol. "

It is thus clear that only one section, in the B.A. course, in the 1st respondent college was admitted to grant in aid and that the science sections, in which the petitioners were appointed, has not been so admitted.

In exercise of the powers conferred by Sections 20 and 21 read with Section 99 of the Andhra Pradesh Education Act 1982, the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 were made and notified in G.O.Ms.No.29 dated 5.2.1987. Under Rule 1(2), these rules apply to all educational institutions (both government and private), imparting degree courses in the State of Andhra Pradesh. Rule 2(d) defines competent authority to be the authority who is competent to grant permission/recognition/affiliation, as the case may be, to the educational institutions. Rule 3 provides that the competent authority for granting or withdrawing permission

shall be the Commissioner. Rule 4 relates to the conditions of grant of permission and Rule 7, the staff pattern. Rule 7(2)(b) provides that appointment of teaching staff in private educational institutions shall be by way of recruitment through the Andhra Pradesh College Service Commission or as per the procedure prescribed by the government from time to time. Rule 7(4) provides for payment of salaries and thereunder the educational agency of any private institution shall pay salaries to its staff as per the government scales of pay and by following such procedure as may be prescribed by the government from time to time, in this regard.

Sri P.V. Sanjay Kumar, learned counsel for the 1st respondent, would contend that the requirement of payment of government scales of pay, to lecturers in private unaided degree colleges, would apply only where the teaching staff is appointed in accordance with Rule 7(2)(b). Learned counsel would refer to the counter affidavit, of the 1st respondent, to contend that the selection of the petitioners as lecturers was not in accordance with the procedure prescribed and they were, therefore, not entitled to claim government scales of pay under Rule 7(4) of the rules notified in G.O.Ms.No.29 dated 5,2,1987. The specific averments, in the affidavit filed along with the writ petition, that the petitioners were selected in accordance with the procedure prescribed in G.O.Ms.No.12 dated 10.1.1992 is not denied. All that Rule 7(2)(b) of G.O.Ms.NO.29 dated 5.2.1987 requires is that appointment of teaching staff in private educational institutions should be as per the procedure prescribed by the government and since the procedure prescribed in G.O.Ms.No.12 dated 10.1.1992 is also a procedure prescribed for appointment of teachers in private unaided degree colleges, it cannot be said that the petitioners were appointed contrary to Rule 7(2)(b) of the rules in G.O.Ms.No.29 dated 5.2.1987. In any event, having appointed the petitioners as lecturers and having extracted work from them, it is not open for the 1st respondent to contend that though it had violated the statutory rules, in making certain appointments, it was entitled to take advantage of such an illegality and deny government scales of pay to such lecturers appointed by it. Statutory provisions require compliance and the 1st respondent cannot be heard to contend that its illegal action, in making appointments contrary to the statutory rules, would justify it's violating Rule 7(4) and in denying payment of government scales of pay to the lecturers so appointed.

Sri P.V. Sanjay Kumar, learned counsel for the 1st respondent, would also

refer to the agreement to contend that since the petitioners had agreed to receive Rs.1800/- per month as salary they must be deemed to have waived their statutory rights under Rule 7(4) of the Rules notified under G.O.Ms.No.29 dated 5.2.1987. It is true that unlike fundamental rights, statutory rights can be waived. While the petitioners would contend that this agreement was under coercion and is opposed to public policy and as such is void under Section 23 of the Indian Contract Act, it is not necessary for us to examine this aspect, since it is well settled that statutory provisions made in public interest and based on public policy cannot be waived. It cannot be denied that Rule 7(4), which ensures government pay scales to lecturers in private unaided educational institutions, is in public interest, as it seeks to ensure that the lecturers are adequately monetarily compensated thereby ensuring higher standard of teaching and imparting of education in private unaided degree colleges.

A right can be waived by the party for whose benefit certain requirements or conditions have been provided for by a statute subject to the condition that no public interest is involved therein. (**Krishna Bahadur Vs. Purna Theatre**). A bald plea of waiver cannot defeat statutory provisions made in larger public interest. (**Joginder Singh Sodhi Vs. Amar Kaur**; **Shalimar Tar Products Ltd Vs. H.C. Sharma** and **Pulin Behari Lal Vs. Mahadeb Dutta**). Further, the agreement said to have been entered into between the petitioners and the 1st respondent is to waive an illegality. Violation of Rule 7(4), of the Rules in G.O.Ms.No.29 dated 5.2.1987, by the 1st respondent is an illegality which is sought to be overcome by way of the agreement. While waiver is the abandonment of a right and signifies nothing more than an intention not to insist upon the right, an agreement to waive an illegality is void on grounds of public policy and would be unenforceable. (**Waman Shrinivas Kini Vs. Ratilal Bhagwandas & Co.**)

Coercion or otherwise, the statutory provisions of Rule 7(4), of the rules in G.O.Ms.No.29 dated 5.2.1987, which is in pubic interest, cannot be waived by agreement and would require strict compliance.

There shall be a direction to the 1st respondent to comply with Rule 7(4) of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 notified in G.O.Ms.No.29 dated 5.2.1987 and pay the petitioners salaries in government

scales of pay.

Both Sri D.V.Seetharam Murthy, learned counsel for the petitioners and Sri P.V. Sanjay Kumar, learned counsel for the 1st respondent, would contend that since the proposal of the management, for admitting the B.Sc. sections to grant in aid is pending with the government, though it was made as early as in 1992, that this court should direct respondents 2 and 3 to admit the B.Sc. sections of the 1st respondent college to grant in aid which would then, automatically, result in lecturers working in the unaided posts in the science sections of the 1st respondent college being given scales of pay equivalent to that of government scales.

A perusal of the provisions of Act 22/88 reveals that the entitlement of grant in aid is on compliance of the conditions prescribed in the Grant in Aid Code and other instructions issued by the government and on the recommendations of the Committee constituted for such purpose. Reference is made in Section 3(2) of Act 22/88, to the Grant in Aid Code, which is non-statutory. In the **State of Assam v. Ajit Kumar Sarma**, the Supreme Court held thus:

"The main question which falls for decision in this appeal is whether the High Court is right in issuing a writ of mandamus to the State through the Director directing it not to give effect to the letter of March 20, 1962. It has not been contended on behalf of the appellants that the Rules have statutory force and the arguments before us have been made on the basis that the Rules have no statutory force and are mere executive instructions given by the Government to private colleges as a condition for the implementation of pay scales etc. recommended by the University Grants Commission for private colleges, these scales being apparently higher than those existing from before. It seems to us that the High Court was in error in granting a writ of mandamus against the State through the Director once it found that the Rules had no statutory force and were mere administrative instructions for the purpose of giving grant-in-aid to private colleges. **What grants the State should make to private educational institutions and upon what terms are matters for the State to decide.** Conditions of these grants may be prescribed by statutory rules; there is however no law to prevent the State from prescribing the conditions of such grants by mere executive instructions which have not the force of statutory rules. In the present case the Rules have been framed in order to give revised grants to private colleges to enable them to give higher scales of pay etc. to their teachers in accordance with the recommendations of the University Grants Commission. The Rules have been held by the High Court to have no statutory force, and that is not disputed before us. In these circumstances it is clear that the Rules are mere executive instructions containing conditions on which grants would be made to private colleges to implement the recommendations of the University Grants Commission as to pay scales etc. of teachers of private colleges. Where such conditions of

grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. If it decides not to accept the instructions it will naturally not get the grant-in-aid which is contingent on its accepting the conditions contained in the instructions. On the other hand, if the college accepts the conditions contained in the instructions, it receives the grant-in-aid. If however having accepted the instructions containing the conditions and terms, the college does not carry out the instructions, the Government will naturally have the right to withhold the grant-in-aid. **That is however a matter between the Government and the private college concerned. Such conditions and instructions as to grant-in-aid confer no right on the teachers of the private colleges and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced**. It is only for the Governing Body of the College to decide whether to carry out any direction contained in mere administrative instructions laying down conditions for grant-in-aid. Further it is open to the Governing Body not to carry out any such instruction which is not based on rules having statutory force, and it will then be naturally open to the State to consider what grant to make. But if the Governing Body chooses to carry out the instruction, it could hardly be said that the instruction was being carried out under any threat. It is certainly not open to a teacher to insist that the Governing Body should not carry out the instruction. **The rules for the purpose of grant-in-aid being — as in this case — merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a mandamus asking for the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them because of the grant-in-aid being withheld in whole or in part. Such mere administrative instructions even though called rules are only a matter between the Governing Body and the State through the Director and cannot in our opinion form the basis of a petition for writ under Article 226 by a teacher……"**

"…….. That decision in our opinion governs the present case also, for it has been found by the High Court, and it is not disputed before us, that the Rules are mere administrative instructions and have not the force of law as statutory rules. **They therefore confer no right on the teachers of private colleges which would entitle them to maintain a writ petition under Article 226 for the enforcement or non-enforcement of any provision of the Rules. The Rules being mere administrative instructions are matters between private colleges and the Government in the matter of grant-in-aid to such colleges, and no teacher of a college has any right under the Rules to ask either for their enforcement or for their non-enforcement**. We are therefore of opinion that the High Court was in error when it granted a writ against the State through the Director, by which the Director was asked not to give effect to its letter dated March 20, 1962, against the Governing Body of the College……..(emphasis supplied)"

Following the aforesaid judgment, a Division Bench of this Court in **Y.Sidda Reddy v. Government of A.P.** held thus:

"……..From an examination of the judgments of the Supreme Court, the settled position of law with regard to the grant-in-aid is that the State is bound to render financial assistance only to those private educational institutions where education is imparted to children upto the age of 14 years. If the State decides to extend some financial assistance to private

educational institutions imparting education to children above 14 years, the State has the discretion to decide to what extent such financial assistance would be rendered so long as the State does not discriminate between the private educational institutions falling in the same class. The decision of the State to extend some financial assistance to any educational institutions imparting education to children above 14 years does not relieve the management of such private educational institutions of its obligations to pay the appropriate salary and other benefits which are either agreed between the management and the employee or imposed upon the management by law……."

As held in **Ajit Kumar Sarma**[6] the conditions and instructions in the Grant-in-Aid Code confer no right on teachers of private colleges to contend that the conditions should be enforced nor can a mandamus be issued at their instance, to the government, to provide grant in aid. Since degree courses are offered to students far above 14 years of age, the State has the discretion to decide upto what extent financial assistance should be rendered. No mandamus can, however, be issued directing the government to provide grant in aid for degree courses in private unaided degree colleges.

Sri P.V. Sanjay Kumar, learned counsel for the 1st respondent, would however submit that while in **Ajit Kumar Sarma**[6], the Supreme Court had held that the teachers had no enforceable right to seek enforcement of the grant in aid code, the Supreme Court had also held that these were matters between the government and the management of the degree colleges and since the proposal of the 1st respondent is pending with the government, the government should be directed to consider the proposal favourably and provide grant in aid. If no mandamus can be issued, to the government, to provide grant in aid, at the behest of teachers neither can it be issued at the instance of the management of a private unaided college. The fact that the proposal submitted by the 1st respondent, to provide grant in aid to the science sections of the college, is pending with the government for more than a decade, cannot however be ignored. The Government cannot keep such matters pending indefinitely and is required to take a decision one way or the other at the earliest.

There shall be a direction to respondents 2 and 3 to consider the proposal submitted by the 1st respondent, take an appropriate decision in this regard, and communicate its decision to the 1st respondent, at the earliest, in any event, not later than six months from the date of receipt of a copy of this order.

As held in **Y. Sidda Reddy**[7], the decision of the State whether or not to extend financial assistance to such educational institutions, does not relieve the management, of such private educational institutions, of its obligations, to pay proper salary and other benefits imposed upon them by law and since the 1st respondent, is duty bound under Rule 7(4), of the rules notified in G.O.Ms.No.29 dated 5.2.1987, to pay salaries to its staff as per the government scales of pay, there shall be a direction to the 1st respondent to pay the applicable government scales, in accordance with Rule 7(4) of the rules notified under G.O.Ms.No.29 dated 5.2.1987, to the petitioners forthwith.

The writ petition is accordingly disposed of. There shall, however, be no order as to costs.

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